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Kok Zi Yao & Ors v LKT Ventures Sdn Bhd & Ors

B HIGH COURT (KUALA LUMPUR) — SUIT NO WA-24NCC-327–06 OF 2019
ANAND PONNUDURAI JC
20 DECEMBER 2019

C *Companies and Corporations — Directors — Removal — Plaintiffs removed as directors pursuant to resolution passed at extraordinary general meeting — Whether resolution passed at extraordinary general meeting invalid due to short notice — Whether service of notice to convene extraordinary general meeting valid — Whether convening of extraordinary general meeting invalid — Companies Act 2016 ss 206(2) & 316(1)*

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Three plaintiffs were directors of the first defendant company whereas the second and third defendant were also directors of the first defendant at all material times. The plaintiffs received notices dated 29 March 2019 form the first defendant's company secretary informing that an extraordinary general meeting ('the EGM') was to be convened on 15 April 2019 to consider resolutions to remove the three plaintiffs as directors of the first defendant with immediate effect. The EGM proceeded on 15 April 2019 and the resolutions were passed resulting in the removal of the plaintiffs as the director of the first defendant. The plaintiffs sought a derivation action as a result of the dismissal. The issue was whether the resolution passed on 15 April 2019 to remove the plaintiffs as the directors were null and void because the special notice and notice of the EGM that were sent via certificate of posting on 1 April 2019 was short of the 14 clear days required by ss 206(2) and 316(1) of the Companies Act 2016. The defendants contended that the service of the notices on the plaintiffs were valid and in accordance with law. It was further argued that the computation of the service of the notice started on the date of the notice was served which was on 1 April 2019. The plaintiff argued that since the notices were posted on 1 April 2019 and the EGM was conducted on 15 April 2019, there was only 13 clear days given as computation of the 14 days was to exclude the day of service as well as the day of the meeting. Another issue to be taken into account was whether the EGM was valid or not as the defendant contended that the presence of directors in the EGM could validate the meeting.

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Held:

(1) There was merit in the plaintiff's contention. If one excluded the day of service of 1 April 2019 as well as the date of the EGM of 15 April 2019,

then clearly s 316 had not been complied with in that the requisite notice of 14 days was not given but only 13 days. There was in fact short notice of the said EGM of 15 April 2019 (see para 21).

(2) The mere presence of a director at the general meeting could not be held to his prejudice or to preclude him from being able to subsequently contended that such a meeting was invalid at all times due to short notice. The presence and participation of a director at a general meeting could not validate what was clearly an invalid meeting by reason of short notice. It was clear that a statutory provision on notice must be properly given to be valid and must be strictly adhered to. The EGM of the first defendant held on 15 April 2019 was invalid and all resolutions passed on that day were null and void (see paras 39, 42–43 & 45).

[Bahasa Malaysia summary

Tiga plaintif adalah pengarah syarikat defendan pertama manakala defendan kedua dan ketiga juga merupakan pengarah defendan pertama pada masa material. Plaintif menerima notis bertarikh 29 Mac 2019 dari setiausaha syarikat defendan pertama yang memaklumkan bahawa mesyuarat agung luar biasa ('EGM') akan diadakan pada 15 April 2019 untuk mempertimbangkan resolusi untuk membuang ketiga-tiga plaintif sebagai pengarah defendan pertama dengan kadar segera. EGM dilakukan pada 15 April 2019 dan resolusi-resolusi itu diluluskan mengakibatkan penyingkiran plaintif-plaintif sebagai pengarah defendan pertama. Plaintif-plaintif menuntut tindakan derivatif akibat pemecatan tersebut. Isu yang ditimbulkan ialah sama ada resolusi yang diluluskan pada 15 April 2019 untuk membuang plaintif daripada jawatan pengarah adalah terbatal dan tidak sah kerana notis khas dan notis EGM yang dihantar melalui bukti pengeposan pada 1 April 2019 adalah kurang dari 14 hari yang diperuntukan oleh ss 206(2) dan 316(1) Akta Syarikat 2016. Defendan berpendapat bahawa penyampaian notis ke atas plaintif-plaintif adalah sah dan bertetapan dengan undang-undang. Tambahan lagi, penghitungan penyampaian notis bermula pada tarikh notis disampaikan pada 1 April 2019. Plaintif-plaintif berpendapat bahawa sejak notis tersebut disampaikan pada 1 April 2019 dan EGM dijalankan pada 15 April 2019, maka hanya terdapat 13 hari kerana pengiraan 14 hari adalah tidak termasuk hari penyampaian dan juga hari mesyuarat tersebut. Isu lain yang harus dipertimbangkan adalah sama ada EGM itu sah atau tidak kerana defendan berpendapat bahawa kehadiran para pengarah dalam EGM dapat mengesahkan mesyuarat tersebut.

Diputuskan:

(1) Terdapat merit dalam hujahan plaintif-plaintif. Sekiranya hari penyampaian iaitu pada 1 April 2019 dikecualikan dan juga tarikh EGM iaitu pada 15 April 2019, maka dengan jelas s 316 tidak dipatuhi kerana notis yang diperlukan selama 14 hari tidak diberikan tetapi hanya 13 hari

notis diberikan. Namun terdapat notis singkat mengenai EGM tersebut pada 15 April 2019 (lihat perenggan 21).

(2) Kehadiran seorang pengarah dalam mesyuarat agung tidak boleh memprejudis atau menghalang untuk dia kemudiannya menyangkal bahawa mesyuarat itu tidak sah kerana notis yang singkat. Kehadiran dan penyertaan pengarah dalam mesyuarat agung tidak dapat mengesahkan mesyuarat yang tidak sah kerana notis yang singkat. Adalah jelas bahawa peruntukan undang-undang mengenai notis haruslah diberikan dengan betul untuk menjadi sah dan mesti dipatuhi dengan tegas. EGM defendan pertama yang diadakan pada 15 April 2019 tidak sah dan semua resolusi yang diluluskan pada hari itu adalah terbatal dan tidak sah (lihat perenggan 39, 42–43 & 45).]

Cases referred to

Carew-Reid v Public Trustee & Ors (1996) 20 ACSR 443, SC (distd)
Extreme System Sdn Bhd v Ho Hup Construction Company Bhd & Ors [2010] MLJU 232, HC (refd)
Granasia Corporation Berhad & Others v Choong Wye Lin (P) & Others [2008] MLJU 259, HC (refd)
Hector Whaling, Limited, Re [1936] Ch 208, ChD (refd)
HLB Nominees (Tempatan) Sdn Bhd v SJA Bhd & Anor and another appeal [2004] 2 MLRA 361, CA (refd)
Kow Kek Leong v KL Team Development Sdn Bhd & Ors [1997] MLJU 323; [1997] 4 MLRH 640, HC (refd)
Pang Kok Yong v Pang Kee Hwi Realty Sdn Bhd & Ors [2014] MLRHU 395, HC (folld)
Petsch v Kennedy [1971] 1 NSWLR 494, CA (distd)
Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors [2019] 8 MLJ 8; [2019] 3 CLJ 268, HC (distd)
Solaiappan & Ors v Lim Yoke Fan & Ors [1968] 2 MLJ 21, FC (refd)
Wong Kim Yoon v Cheong Kim Hong & Ors [2019] MLJU 1589; [2019] MLHRU 1293, HC (refd)

Legislation referred to

Companies Act 2016 ss 206(2), 316, 316(1)
Interpretation Acts 1948 and 1967 s 54, 54(1)(a)

Ng Yih Miin (Dee, Netto, Fatimah & Ng) for the plaintiffs.
Abdul Fareed Abdul Gafoor (Noramira Abd Hamid with him) (VM Mohan, Fareed & Co) for the defendants.

Anand Ponnudurai JC:

[1] Vide encl 1, the plaintiffs in their originating summons pray for the following orders:

1. Mesyuarat Agung Luar Biasa pada 15 April 2019 adalah tidak sah;
2. Kesemua resolusi pada hari tersebut adalah tidak sah;
3. Kesemua plaintif dikembalikan semula ('reinstate') sebagai Pengarah Defendan Pertama;
4. Senarai Proxy dan Penyerta pada Persidangan tersebut dibekalkan kepada pihak Plaintif-plaintif;
5. Resolusi syarikat dibekalkan kepada Plaintif-plaintif;
6. Defendan untuk membekalkan rekod kewangan dan akaun dengan alasan-alasan untuk setiap kewangan untuk setiap bulan termasuk bulan-bulan di mana Plaintif-plaintif dipecat sebagai Pengarah Defendan sehingga pelupusan kes derivative yang bakal akan dimulakan;
7. Suatu Injunksi untuk menghalang Defendan dan pengarah-pengarah defendan secara sendiri dan/atau ejen-ejennya dan/atau peketja-pekerjanya dan/atau penjawat-penjawatnya dan/atau selainnya untuk mengeluarkan wang di dalam akaun Defendan untuk keuntungan peribadi selringga pertikaian antara pihak-pihak dapat diselesaikan kecuali dengan izin Mahkamah;
8. Suatu Injunksi untuk menghalang Defendan dan pengarah-pengarah defendan secara sendiri dan/atau ejen-ejennya dan/atau pekerja-pekerjanya dan/atau penjawat-penjawatnya dan/atau selainnya memindahkan dan/atau melaksanakan permindahan dan/atau memberi efek kepada permindahan syer mereka;
9. Perintah-perintah sedemikian yang berbangkit seperti yang diperlukan untuk memberi kesan kepada Perintah-Perintah yang telah dipohonkan di atas;
10. Gantirugi Am yang ditafsirkan;
11. Gantirugi Teladan;
12. Kos; dan
13. Relief selanjutnya dan/atau relif lain yang mana Mahkamah Yang Mulia ini fikirkan patut dan suai manfaat untuk diberikan dalam kesemua keadaan.

[2] The plaintiffs' prayers in paras 7–8 above essentially seeks interim injunctive relief pending the full disposal of a derivative action to be filed by the plaintiffs.

A **[3]** However, at the hearing date on 12 December 2019 learned counsel of the plaintiffs informed that the plaintiffs were withdrawing prayers 7–8 whereby it is noted that the plaintiffs application for leave to commence a derivative action is set for hearing on 20 January 2020 in another court ie Kuala Lumpur High Court Suit No WA-24NCC-364–07 of 2019.

B

[4] The background facts of the matter are briefly as follows:

(a) it is not disputed that the three plaintiffs were directors of the first defendant company whereas the second and third defendant were also
C directors of the first defendant at all material times;

(b) the plaintiffs' received notices dated 29 March 2019 from the first defendant's company secretary informing that an EGM was to be convened on the 15 April 2019 to consider resolutions to remove the three plaintiffs as directors of the first defendant with immediate effect;
D and

(c) the EGM proceeded on 15 April 2019 and the resolutions were passed resulting in the removal of the plaintiffs as directors of the first defendant. Hence this application.

E

[5] The plaintiffs in their initial written submissions contend that the application herein relates to two important issues which needs to be decided by this court which are as follows:

F (a) whether the resolution passed on the 15 April 2019 to remove the plaintiffs as directors are null and void because the special notice and notice of EGM that were sent via certificate of posting on the 1 April 2019 is short of the 14 clears days required by ss 206(2) and 316(1) of the Companies Act 2016 ('the CA'); and

G (b) whether the current surrounding situation taking into account the conducts of the second and third defendants warrants the ancillary reliefs and injunctive relief as prayed for in the originating summon ('OS').

[6] As highlighted above, in light of the plaintiffs' withdrawing their
H application for injunctive relief, the main and only issue left to be decided is whether there was short notice of the said EGM and if so, the consequences thereof.

NOTICE OF THE EGM

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[7] Although the actual notice of the meeting was dated 29 March 2019, it is imperative to examine when it was *actually served* on the plaintiffs. In this regard, it would be pertinent to consider the averments of the plaintiffs on this issue.

[8] Vide encl 2, the third plaintiff avers as follows:

> 37. Pada 8.4.2019, saya hanya menerima emel daripada setiausaha syarikat Defendan yang melampirkan:
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> a) Notis Khas untuk Pemecatan Pengarah menurut Seksyen-Seksyen 206(3) Akta Syarikat 2016 bertarikh 29.3.2019;
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> b) Notis Mesyuarat Agung Luar Biasa menurut Seksyen 322 Akta Syarikat 2016 bertarikh 29.3.2019; dan
>
> c) Surat Akuan Mengepos yang dicopkan pada 1.4.2019.
>
> Sesalinan Emel daripada *callvwong@eurogain.com.my* bertarikh 12.4.2019 kepada saya dikemukakan dan ditanda sebagai Ekshibit LKT-10.
> Notis Khas untuk Pemecatan Pengarah menurut Seksyen-Seksyen 206(3) Akta Syarikat 2016 bertarikh 29.3.2019 ditanda sebagai Ekshibit LKT-11.
> Notis Mesyuarat Agung Luar Biasa menurut Seksyen 322 Akta Syarikat 2016 bertarikh 29.3.2019 ditanda sebagai Ekshibit LKT-12.
> Surat Akuan Mengepos yang dicopkan pada 1.4.2019 dikemukakan dan ditanda secara kolektifnya sebagai Ekshibit LKT-13.
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> 38. Menurut Notis-Notis tersebut, LKT Ventures berniat untuk mengadakan suatu mesyuarat agung luar biasa ('EGM') pada 15.4.2019, pukul 10.30 pagi dimana mereka berhasrat untuk meluluskan suatu resolusi untuk memecatkan saya sebagai salah seorang pengarah-pengarah bagi LKT Ventures.
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> 39. Pada masa yang sama, EGM tersebut adalah untuk memecat dua lagi pengarah iaitu TAY KOK WEA dan Kok Zi Yao.
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> 42. Berdasarkan yang atas, notis khas dan notis 'to convene Extraordinary General Meeting' bertarikh 29.3.2019 hanya dihantar kepada Plaintif-plaintif pada 1.4.2019 melalui 'Surat Akuan Mengepos' (LKT-13) dan mesyuarat agung luar biasa tersebut dijalankan pada 15.4.2019.
>
> 43. Saya telah dinasihati oleh Peguamcara saya bahawa untuk mengadakan suatu persidangan, notis untuk mengadakan persidangan memerlukan tempoh notis sebanyak 14 'Clear Days' dan tempoh masa tersebut ialah tidak termasuk hari pengeposan iaitu 1.4.2019 dan tidak termasuk hari mesyuarat. Oleh demikian, mengikut tarikh yang dikemukakan, tempoh notis tersebut adalah tidak mencukupi 14 hari (clear days).
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> 44. Saya juga dinasihati bahawa peruntukan undang-undang untuk tempoh notis mesti diperhatikan dengan ketat terutamanya apabila melibatkan perkara penting seperti pemecatan pengarah-pengarah syarikat. Berdasarkan ketidakpatuhan kepada peruntukan undang-undang ini, maka mesyuarat agung luar biasa pada 15.4.2019 adalah tidak sah dan resolusi yang diluluskan pada hari tersebut juga adalah tidak sah sama sekali.

[9] Vide encl 3, the second plaintiff avers as follows:

A 9. Pada 8.4.2019, saya hanya menerima surat 'Special Notice' yang bertarikh 29.3.2019. Saya telah dinasihati bahawa Notis yang diberikan adalah kurang daripada yang diperuntukan di undang-undang. (Dilampirkan di sini sebagai Ekshibit TAY-1).

B **[10]** Vide encl 4 the first plaintiff avers as follows:

7. Pada 7.4.2019 saya hanya menerima surat 'Special Notice' yang bertarikh 29.3.2019. Saya telah dinasihati bahawa Notis yang diberikan adalah kurang daripada yang diperuntukkan di undang-undang (Dilampirkan di sini sebagai Ekshibit KOK-1).

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[11] In response to the plaintiffs' averment on notice, the second defendant vide his affidavit affirmed on 16 July 2019 (encl 13) has stated as follows:

D 32. Sebagai balasan kepada perenggan 43 dan 44 Afidavit Sokongan Lim, saya selanjutnya telah dinasihati oleh peguamcara Defendan bahawa penyerahan Notis Mesyuarat kepada Plaintif-plaintif adalah teratur dan sempurna mengikut undang-undang yang sedia ada. Malah, kesemua Plaintif (termasuk proksi) hadir pada mesyuarat berkenaan. Peguamcara Defendan akan berhujah deugan lebih lanjut mengenai perkara ini pada sesi pendengaran kelak.

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[12] As can be seen from the above, the defendants do not dispute the plaintiffs' averment in relation to the dates the actual notices were sent out ie 1 April 2019 or the actual date of receipt of the notices.

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[13] The defendants have merely made a bare averment that the service of the notices on the plaintiffs were valid and in accordance with law. In addition, the defendants have in their written submission contended that the computation of the service of the notice starts on the date the notice was served G which was on 1 April 2019.

[14] On the contrary, it was argued for the plaintiffs that since the notices were posted on 1 April 2019 and the EGM conducted on 15 April 2019, there was only 13 clear days given as computation of the 14 days is to exclude the day H of service as well as the day of the meeting.

[15] In order to consider the merits of the plaintiffs' contention, it would be apt to consider the actual statutory provisions on notice as well as decided cases on this issue.

I

THE COMPANIES ACT AND DECIDED CASES

[16] It is common ground that the notice of the meeting has to be at least 14 days. Section 316 of the Companies Act 2016 provides as follows:

316 Notice required for meetings of members

(1) A meeting of members of a private company, other than a meeting for the passing of a special resolution, shall be called by notice of at least fourteen days or any longer period specified in its constitution.

[17] It is also pertinent to refer to s 54(1)(a) of the Interpretation Acts 1948 and 1967 which provides as follows:

54 Computation of time

(1) In computing time for the purposes of any written law —

(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

[18] Pursuant to s 54 above, the date of the EGM being 15 April 2019 would have to be excluded when computing time.

[19] In relation to the plaintiffs' contention that the date of service of the notices should also be excluded, reliance was placed on the case of *Re Hector Whaling, Limited* [1936] Ch 208 where it was held as follows:

BENNETT J. [after stating the facts, continued:] The first point to be decided is what is meant by the phrase 'not less than twenty-one days' notice,' contained in sub-s. 2 of s.117 of the Companies Act, 1929. In the interest of everybody it is of importance that there should be no doubt as to the meaning of a phrase in a section of almost daily use. I do not think there is any doubt about its meaning, and I propose to found my decision on *Rex v Turner* (I) and *Chambers v. Smith* (2) and to decide that the phrase means twenty-one clear days exclusive of the day of service and exclusive of the day on which the meeting is to be held.

[20] Reference was also made to the decision of the High Court in the case of *Extreme System Sdn Bhd v Ho Hup Construction Company Bhd & Ors* [2010] MLJU 232 (HC). In that case, an issue arose as to whether or not there was short notice for the calling of an EGM. In holding that there was short notice, Mah Weng Kwai JC (as he then was) held as follows:

Section 54 of the Interpretation Acts 1948 and 1967 (Act 388) provides:

(1) In computing time for the purpose of any written law:

(a) A period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing done.

Similarly in this case I am of the view that the day of service of the Second Notice is to be excluded in reckoning the 28 days.

The notice period of not less than 28 days under s 153 of the Act is the statutory minimum period. It is mandatory as the words '... the resolution shall not be effective unless ...' are used in the section.

Further I do not think the provisions of s 355(1) of the Act can come to the aid of the third and eighth defendants in this case as contended by counsel Gopal Sreenevasan.

S 355 (1) of the Act provides:

> No proceeding under this Act shall be invalidated by any defect, irregularity or deficiency of notice or time unless the Court is of opinion that substantial injustice has been or may be caused thereby which cannot be remedied by any order of the Court.

[21] Based on the above, I have no hesitation in finding merits in the plaintiffs' contention. If one excludes the day of service of 1 April 2019 as well as the date of the EGM of 15 April 2019, then clearly s 316 has not been complied with in that the requisite notice of 14 days was not given but only 13 days. As such, I find that there was in fact short notice of the said EGM of 15 April 2019.

[22] Having decided the above, the next issue to be decided is what is the effect of such short notice. This similar issue was considered in the case of *Granasia Corporation Berhad & Others v Choong Wye Lin (P) & Others* [2008] MLJU 259 (HC) where the High Court held as follows:

(i) The service of the notice of both the EGM to appoint 3 new directors and to remove the managing director respectively were served two days short of the required 14 days pursuant to Section 145(2) taking into consideration the need to add two days to allow the service by post to be deemed served as per Article 159.

(ii) The notices of both the EGM were not served on the 3 other directors that is to say the 4th, 5th and 6th plaintiffs as required under Article 93 read together with Article 161(1)(a).

(iii) The notices of both the EGM were not advertised in the daily press as required under Article 59 of the Articles of Association although the shareholders had been served with the notices.

It is trite law that any general meeting of a company which contravenes the provision with respect to the service of the notices to members and directors must comply with the procedural requirements under the Act and the Articles of Association. This is set out clearly in the case of HLB Nominees (Tempatan) Sdn Bhd, supra.

The case of *Lim Hean Pin v Thean Seng Co Sdn Bhd & Ors* [1992] 2 MLJ 10 sets out clearly the serious consequence of failing to conduct a meeting in accordance with the provisions of the Companies Act 1965. That case dealt with the right of the shareholders to attend, speak and vote at a general meeting under Section 148. The

relevant passage per Edgar Joseph Jr J (as he then was) at page 34 read as follows: A

> ... not a mere procedural irregularity curable by the majority but an illegality since it was an abuse of power or oppression on the minority which vitiated and therefore rendered null and void the AGM and all resolutions passed thereat.

B

[23] Similarly, in the case of *Extreme Systems Sdn Bhd*, the High Court referred to a Court of Appeal decision which enunciated as follows:

> In the case of *HLB Nominees (Tempatan) Sdn Bhd v SJA Bhd & Anor and Another Appeal* [2005] 1 CLJ 23, Mokhtar Sidin JCA held that where the purpose of the EGM was to remove some of the existing directors and in their place to elect the directors of the defendants' choice, a proper and valid notice of such a meeting should be issued because it affected the rights of those directors who were duly elected at a proper and valid annual general meeting of the company concerned. As such the process and procedure for calling such a meeting should be adhered to strictly. Any defect in the process or procedure thereof is not curable under s 355 of the Act.

C

D

[24] Further, the plaintiffs' contention is supported by the decision of the Federal Court in the case of *Solaiappan & Ors v Lim Yoke Fan & Ors* [1968] 2 MLJ 21 (FC) where the Federal Court held the dismissal of directors as being null and void on account of short notice of the meeting.

E

[25] There remains one issue to be considered and that is whether or not the attendance and participation of the plaintiffs at the said EGM on 15 April 2019 has the effect or validating/curing such short notice.

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[26] It was argued for the defendants that the attendance and participation cures any such short notice and learned counsel for the defendants relies on two decisions of the Australian Courts namely *Carew-Reid v Public Trustee & Ors* [1996] 20 ACSR 443 and *Petsch v Kennedy* [1971] 1 NSWLR 494. However, learned counsel for the plaintiffs contends that these two cases are not applicable and ought to be distinguished based on their facts and that in any event, they do not deal with any similar statutory provisions with the requirement of minimum notice of meetings.

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[27] Having perused these two Australian cases, I agree with the plaintiffs' contention that they do not assist this court. As contended by the plaintiffs, I agree that the facts therein are indeed different.

I

[28] In the *Carew-Reid* case, the issue there was not one of whether the shareholders meeting was valid on account of short notice but rather on the issue of whether the voting rights attaching to certain of the shares was not exercised by the true shareholders. Further, there was no evidence in that case

to suggest that the notice period was inadequate.

[29] In the case of *Petsch v Kennedy,* the issue there was whether one Mr Kennedy was a director at the material time and the validity of a directors meeting (and not a shareholders meeting as in the current case) if he was not. It was concluded that he was a director. On the issue of sufficient notice, it was held to be valid on the basis that it was common ground that no notice of directors meeting have ever been sent out nor was there any evidence of any established course of practice in the summoning and holding of directors meetings.

[30] In any event, in neither of the above two cases was there any reference to nor any discussion in relation to any provision similar to s 316(1) of the Companies Act which mandates at least 14 day notice of a meeting.

[31] Counsel of the defendants also relies on the decision of S Nantha Balan J (as he then was) in *Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors* [2019] 8 MLJ 8; [2019] 3 CLJ 268. Again, the facts of that case are different. In *Rozilawati*'s case, the notice of the meeting was in compliance with the articles of association of the company and it was determined that there was no short notice. However, the issue in that case related to the sufficiency of details in the notice of the matters to be discussed at the meeting.

[32] The plaintiff there attended the meeting but thereafter alleged that the same was invalid and null and void by reason of the fact that the notice did not state the issues of her performance etc or that the decision to terminate her contract was to be deliberated by the board. In holding the notice and agenda valid, His Lordship held as follows:

> [28] Next, it should be observed that article 86 is silent on the need for any specific details to be mentioned in the notice or agenda for the board meeting which was held on 30 May 2018. The plaintiff in fact attended the board meeting. *Hence, there is no issue in so far as sufficiency of notice is concerned.* The only issue is whether the notice and/or the agenda and by extension, the board meeting, is invalid and null and void by reason of the fact that the notice and/or agenda did not state that the plaintiff's poor performance, poor management or negligent performance as MD was to be discussed and/or that a decision to terminate her contract of employment was to be deliberated upon and/or that a decision will be taken at the board meeting.
>
> [29] As it turned out, at the board meeting, the chairperson informed those present that for the reasons as stated in the minutes of the board meeting, a decision had been taken to terminate the plaintiffs contract of employment as MD of the first defendant. From the evidence as presented, the plaintiff appears to have been 'blind-sided' and taken by complete surprise. She was livid and walked out of the board meeting. Thereafter, a formal letter of termination of employment was sent to the plaintiff. She then lodged the s 20 complaint. (Emphasis added.)

[33] The above decision of *Rozilawati,* was also premised on the fact that article 86 of the company's articles of association were silent on the need for any specific details to be mentioned in the notice or agenda for the board meeting. A

[34] Hence, in my considered view, the above cases relied upon by the learned counsel for the defendant does not support his contention. B

[35] On the other hand, I am more inclined to accept the contrary submission by learned counsel of the plaintiffs based on the authorities cited that the attendance and/or participation of the plaintiffs at the said EGM cannot and does not validate such meeting despite the short notice. C

[36] Reliance was placed by the plaintiff on several decisions such as *Wong Kim Yoon v Cheong Kim Hong & Ors* [2019] MLJU 1589; [2019] MLHRU 1293 and *Pang Kok Yong v Pang Kee Hwi Realty Sdn Bhd & Ors* [2014] MLRHU 395. D

[37] In the case of *Wong Kim Yoon*, the plaintiff therein had filed an application under s 346 of the Companies Act 2016 to wind up the company on the basis of minority oppression. E

[38] Various grounds were provided to support the application and one of the grounds was that there was lack of notice to attend the company's 20th general meeting which the plaintiff in any event had attended. In holding that there was oppression, the court held as follows: F

> [62] To finally substantiate the oppression on the plaintiff, on 9 February 2018, the plaintiff received a 'Notice of 28th Annual General Meeting' dated 30 January 2018 ('the Notice') stating of the Annual General Meeting to be held on 14 February 2018. The Notice on the plaintiff runs contrary to the provision of company's Constitution and s 316(1) of the Act which state, inter alia, that the Notice must be given to the shareholders 14 clear days before the date of the schedule Annual General Meeting. Exhibit 'WKY-16' clearly shows that the envelope enclosing the Notice was only posted to the plaintiff on 2 February 2018. Although the plaintiff attended the Annual General Meeting and came prepared with a list of written questions to the board and the company's secretary (exhibit 'WKY-17') to address various issues, instead of receiving answers, she was told that a written answer will be given. Only two months later she received a brief reply dated 19.4.2018 (exhibit 'WKY-18') to which the reply are said to be unsatisfactory. The Notice Is obviously belated and reflect attempt by the defendants to hinder or prevent the plaintiff from attending the Annual General Meeting. G H I
>
> CONCLUSION
>
> [63] In the upshot, the plaintiff's rights and interests as a shareholder of the company are obviously being wrongfully disregarded. She is no longer in a position to protect her interests as a shareholder and any action on her part to rectify the

A situation will be in vain. In those circumstances, it is in the best interest of the plaintiff that her shares are to be bought out by the defendants at a fair market value to be decided by the Court.

B **[39]** Whilst I am cognisant of the fact that the above case relates to a s 346 oppression application, the decision nonetheless supports the view that the mere presence of a director at the general meeting cannot be held to his prejudice or to preclude him from being able to subsequently contend that such a meeting was invalid at all times due to short notice.

C **[40]** The facts in the case of *Pang Kok Yong v Pang Kee Hwi Realty Sdn Bhd & Ors* [2014] MLRHU 395 are more similar to the current. In that case, an EGM of the company was convened on a resolution to remove a director and appoint another director. The issue therein also related to the sufficiency or otherwise of the notice. The plaintiff in that case had also attended the EGM
D and objected to the resolutions but was voted down. The sole issue in that case was whether or not such EGM was invalid, null and void by reason of illegality for being held in contravention of law ie short notice.

E **[41]** His Lordship, Gunalan Muniandy JC (as he then was) in concluding the EGM invalid and a nullity enunciated and held as follows:

> [3] In his affidavit in support the plaintiff deposed that he had strenuously objected to the above changes but was voted down at the directors' meeting. He claimed that the reason was due to the removal of Pang Bee Eng ('PBE') as director vide the
F impugned AGM and as a result she could no longer participate in the meeting. Hence, the present OS, primarily to declare the decisions taken at the said EGM invalid and unenforceable and also, that the plaintiff's removal subsequently as corporate representative was invalid.
>
> ISSUE FOR DETERMINATION
>
G [4] This entire action revolved around one fundamental issue, namely, whether the EGM of the 1st Defendant company ('the company') held on 23 August 2013 was invalid, null and void by reason of illegality for being held in contravention of law.
>
> DECISION
>
H [5] The EGM sought to be declared null and void was held on 23 August 2013. The requisite Notice for the EGM was the Notice dated 31 July 2013 (Exh P1) which was sent out to the company's shareholders on 01 August 2013. It, therefore, provided a notice of only about 22 days from the date of service until the EGM was held. The thrust of the plaintiff's case was that the notice was clearly insufficient and in contravention of the law for infringing s 128 read together with s 153 CA. The
I defendants contended, inter alia, that vide letter dated 08 April 2013, the 3rd and 4th Defendants, being shareholders of the company had given notice of requisition to the company secretary to call for an EGM to be held to appoint one Pang Moi Chu as a director and to terminate Pang Bee Eng ('PBE'), who was the director removed at the impugned EGM, as director. Thereafter, the company secretary vide letter dated 10 April 2013 gave notice to the company directors of the said intention

by the 3rd and 4th Defendants to requisition for the EGM for the purpose stated therein. According to the defendants, PBE had, thus, been given sufficient notice in excess of the minimum 28 days pertaining to the requisition to terminate her appointment as the company's director and accordingly, the EGM held on 23 August 2013 was valid in law. With respect, this was not the requisite notice calling for the EGM to pass the intended resolutions and could not be considered as the special notice for purposes of compliance with the mandatory conditions laid down in s 128(2) read with s 153 CA. For ease of reference, ss 128(2) and 153 CA are reproduced below:

> Section 128(2) Notwithstanding anything to the contrary in the memorandum or articles of the company, special notice shall be required of any resolution to remove a director or to appoint some person in place of a director so removed at the meeting at which he is removed, and on receipt of notice of an intended resolution to remove a director the company shall forthwith send a copy there of to the director concerned, and the director (whether or not he is a member of the company) shall be entitled to be heard on the resolution at the meeting.
>
> Section 153 Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-eight days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

[6] Section 145 which governs generally the calling of meetings states in subsections (1) and (2) as follows: '(1) Two or more members holding not less than one-tenth of the issued share capital or, if the company has not a share capital, not less than five per centum in number of the members of the company or such lesser number as is provided by the articles may call a meeting of the company. (2) A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be called by notice in writing of not less than fourteen days or such longer period as is provided in the articles'.

[7] The Notice for the EGM (Exh Pl) given pursuant to art 54 of the Company's Articles of Association ('A/A') and ss 144(3) and 145 CA proposes two resolutions to be considered, namely, for the appointment of a new director and to terminate the appointment of PBE as director. The resolutions proposed for the EGM fall squarely within the ambit of s 128(2) CA which means that a special notice is required for the resolutions notwithstanding anything to the contrary contained in the memorandum and articles of association ('M/A & A/A) of the company.

Section 153 stipulates that for the resolution for which special notice is required to be effective a notice of not less than 28 days has to be given before the meeting at which it is moved. This means that the 28 day period for special notice is mandatory

save where it is shown to be not practicable which does not apply to the instant case. The said mandatory requirement overrides any provision of the company's M/A & A/A to the contrary.

[8] The notice period for the said EGM beyond doubt fell short of the mandatory 28 day period laid down in s 153 CA. It only provided for a period of about 22 days (01 August 2013–23 August 2013) which was clearly insufficient for a special notice required for the removal of a director and to appoint some other person as director in his place (s 128(2)). As a consequence, by virtue of the explicit and unequivocal terms prescribed in s 153, the resolutions passed at the EGM which was invalidly held in contravention of the law as provided for in s 128(2) read together with s 153 CA shall not be effective and enforceable.

...

...

[13] For the foregoing reasons, I held that the notice given for the EGM which did not comply with the statutory minimum period of notice prescribed in s 153 CA was invalid for being in contravention of law. Consequently, the meeting held pursuant to a notice that was bad in law was void for illegality and accordingly, the resolutions passed thereat were also null and void and of no effect for non-adherence to s 128(2) CA. The EGM held on 23 August 2013 was, therefore, rendered invalid and a nullity. Hence, I granted the declaratory orders sought to declare the EGM and the decisions made thereat invalid as per prayers (i) and (ii) of the Originating Summons. Costs of RM3,000.00 was awarded to the plaintiff.

[42] I accept and adopt the above decision and have no hesitation in holding that the presence and/or participation of a director at a general meeting cannot validate what is clearly an invalid meeting by reason of short notice.

[43] Further, it is clear that a statutory provision on notice must be properly given to be valid and must be strictly adhered to. In *HLB Nominees (Tempatan) Sdn Bhd v SJA Bhd & Anor and another appeal* [2004] 2 MLRA 361, the Court of Appeal held as follows:

In the present appeal, the purpose of the meeting to be held is to remove some of the existing directors including the second plaintiff and in their place to elect the directors of the defendant's choice. To do that, a proper and valid notice of such a meeting should be issued because that meeting would affect the right of those directors to be removed who had been duly elected at a proper and valid AGM of the company. For that, the process and procedure for calling such a meeting should be adhered to strictly as stated in *Mansfield v NSW Leagues' Club Bowling Club Ltd*, the Australian case cited in the above judgment, where it was held that a general meeting to elect the board of directors was held to be invalid for want of proper notice. In my view, any defect in the process or procedure in calling the meeting and at the meeting is not curable under s 355 of the Act. In the present appeal, not only the notice was defective due to the fact that the meeting to be held exceeded the permissible three-month period but also that notice had been declared null and void. There is nothing to prevent the defendant from making another requisition for another EGM, whereby if the plaintiffs failed to convene the EGM requested,

the defendant is at liberty to issue a proper and valid notice to hold the EGM.

[44] Similarly, in the case of *Kow Kek Leong v KL Team Development Sdn Bhd & Ors* [1997] MLJU 323; [1997] 4 MLRH 640 the court there upon determining that the notice of a meeting was bad due to short notice concluded that as a result, such meeting was void and that all resolutions passed thereat were null and void.

CONCLUSION

[45] Under a circumstances, and having regard to the foregoing and for the reasons given, on the ground of insufficiency of notice, I hold that the EGM of the first defendant held on the 15 April 2019 was invalid and that all resolutions passed on that day are null and void.

[46] As such, the following prayers in encl 1 are allowed:

1. Mesyuarat Agung Luar Biasa pada 15 April 2019 adalah tidak sah;
2. Kesemua resolusi pada hari tersebut adalah tidak sah;
3. Kesemua plaintif dikembalikan semula ('reinstate') sebagai Pengarah Defendan Pertama;
4. Senarai Proxy dan Penyerta pada Persidangan tersebut dibekalkan kepada pihak Plaintif-plaintif;
5. Resolusi syarikat dibekalkan kepada Plaintif-plaintif;

[47] As for costs, I order the defendants to pay the plaintiffs costs of RM5,000 *(subject to 4% allocator).*

Order accordingly.

The plaintiff's application allowed with costs of RM5,000 paid by the defendants subject to 4% allocator.

Reported by Mohd Kamarul Anwar